BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

DONAVAN ROGERS	)	
Claimant	)	
VS.	)	
	)	Docket No. 233,965
WAL-MART	)	
Respondent	)	
AND	)	
	)	
INSURANCE COMPANY STATE OF PENNSYLVANIA	)	
Insurance Carrier	)	

ORDER

Respondent appeals from the November 2, 1999, Award of Administrative Law Judge Bryce D. Benedict. Claimant was awarded a 20 percent permanent partial disability to the body as a whole after the Administrative Law Judge found that his fall on January 21, 1998, was an unexplained accident and, therefore, compensable. Respondent contends claimant's fall was of a personal nature and that claimant has failed to prove that his injury arose out of his employment with respondent. Oral argument before the Board was held April 5, 2000.

APPEARANCES

Claimant appeared by his attorney, Thomas R. Lietz of Topeka, Kansas. Respondent and its insurance carrier appeared by their attorney, H. Wayne Powers of Overland Park, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations set forth in the Award of the Administrative Law Judge are adopted by the Appeals Board for the purposes of this award.

The parties have stipulated that, if this matter is compensable, claimant is entitled to a 20 percent permanent partial disability to the body as a whole with no work disability.

ISSUES

Did claimant's accidental injury arise out of his employment with respondent?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant suffered an injury on January 21, 1998, while working at Wal-Mart as an unloader. Sometime during the day, claimant fell, suffering an injury to his neck, resulting in a 20 percent permanent partial whole body disability.

Claimant cannot explain how the fall occurred, remembering little leading up to being loaded into an ambulance. However, two of respondent's representatives, Roger Armstrong, respondent's receiving manager on the date of accident, and Marjorie Ann Padgett, an unloader for respondent, both recall claimant sitting down prior to the fall, complaining that he was not feeling well and that he felt dizzy. Claimant testified at both the preliminary hearing and regular hearing that he was feeling dizzy on the date of accident. Claimant admitted to having a cold and was not feeling well on the date of accident. He described having a sore throat, a cough and thought he was running a temperature. Claimant also testified to having an inner ear problem. Claimant advised one coworker that he was self-medicating with his sister's medicine.

Prior to the fall, claimant had been unloading merchandise off of trucks. At the preliminary hearing, claimant testified that he had to go in and out of the building, going from hot to cold and cold to hot, which contributed to his cold and, ultimately, to the reason for the fall. However, the Administrative Law Judge rejected this theory both at the preliminary hearing and again in the final award. Evidence presented by respondent proved that the temperature variation between the truck and the loading dock was only approximately ten degrees, which the Administrative Law Judge decided was not sufficient to cause claimant any health problems.

Claimant then argued that the fall occurred as the result of an unexplained accident which, in Kansas, is compensable. *See* Davis v. Montgomery Ward, WCAB Docket No. 220,775 (Sept. 1997); 1 Larson's Workers' Compensation Law § 7.04 (1999).

Respondent, however, contends that claimant's fall was the result of a personal condition and, therefore, not compensable.

David L. Smith, M.D., board certified in infectious diseases and internal medicine, stated that claimant's dizzy spells could have occurred as a result of several circumstances. First, he felt claimant may have been the victim of vasovagal syncope, which is a common condition occurring after a person has been sitting, arises and takes several steps. The change in blood pressure causes a person to faint. However, the

Administrative Law Judge rejected this theory, as claimant had walked farther than a few steps before fainting.

Dr. Smith also speculated that claimant's fall may have been related to certain idiopathic episodes which had occurred in claimant's childhood. These falls, which were related to seizures, occurred when claimant was young. After receiving medical treatment, claimant's seizures stopped by age ten. He had not had a seizure in many years. The Administrative Law Judge appropriately rejected this theory, as there was no medical indication that claimant suddenly began experiencing these idiopathic episodes.

Third, Dr. Smith speculated that claimant's fall may have been related to a cranial trauma. It was noted in claimant's medical history that he was involved in a motor vehicle accident in July of 1993, with resulting head and neck injuries. Claimant also was involved in another motor vehicle accident in May of 1996, which may have resulted in neck pain and some memory loss. However, there is no medical evidence indicating those injuries from those motor vehicle accidents were permanent, and the Administrative Law Judge appropriately rejected this theory.

Finally, Dr. Smith speculated claimant may have been self-administering some type of cold medication which interfered with his blood pressure when he stood up. This was rejected, as there was no indication what type of medication claimant may have been on or whether the unidentified medication would have any effect on his blood pressure. In addition, as above stated, claimant walked more than a few feet on the date of accident before fainting.

The Administrative Law Judge found this to be an unexplained fall, which would be compensable under the Workers Compensation Act. *See* Toumi v. Senne & Company, Inc., WCAB Docket No. 237,798 (Jan. 1999). The Appeals Board, rather than this being an unexplained fall, finds a nexus between claimant's feeling dizzy or ill and his fainting spell. Rather than being an unexplained fall, this would be a personal condition of the employee. *See* 1 Larson's Workers' Compensation Law § 9.01[2] (1999).

The Kansas Court of Appeals considered the compensability of unexplained versus personal or idiopathic falls in Bennett v. Wichita Fence Co., 16 Kan. App. 2d 458, 824 P.2d 1001 (1992). In Bennett, the claimant suffered from a personal condition which the Court described as idiopathic, which caused him to experience epileptic seizures and blackouts. While driving a company vehicle, claimant experienced a seizure and, after blacking out, hit a tree. The Kansas Court of Appeals found claimant's condition, while idiopathic, to be compensable. The Court explained that, where an employment injury is clearly attributable to a personal condition of the employee, and no other factors intervene or operate to cause or contribute to the injury, no award is granted. (Citation omitted.) But where an injury

results from the concurrence of some preexisting personal condition *and* some hazard of employment, compensation is generally allowed. (Citation omitted.)

Here, we have what appears to be a personal condition of the employee with no hazard of employment involved. Under Bennett, this would be a noncompensable personal risk.

Professor Larson agrees that the effects of a fall can become compensable if conditions of employment place the employee in a position to increase the effects of the fall, such as in a moving vehicle. 1 Larson's Workers' Compensation Law § 9.01[1] (1999).

In Bennett, the claimant's personal epileptic condition caused him to black out. But it was the fact that he was driving the employer's vehicle that subjected him to an additional risk.

Here, there is no additional risk from claimant's employment. Claimant was simply walking across the floor when he fainted, falling to the ground, injuring his neck. The Appeals Board finds the fall experienced by claimant on January 21, 1998, was a personal condition of the employee. Therefore, the Appeals Board finds that injury did not arise out of claimant's employment with respondent, and the award granting claimant benefits in this matter should be reversed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Bryce D. Benedict dated November 2, 1999, should be, and is hereby, reversed, and an award of benefits in favor of the claimant, Donavan Rogers, and against the respondent, Wal-Mart, and its insurance carrier, Insurance Company State of Pennsylvania, should be, and is hereby, denied.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are assessed against the respondent and its insurance carrier to be paid as follows:

Appino & Biggs Reporting Service	$176.00
Nora Lyon & Associates	$211.80
Owens, Brake, Cowan & Associates	$453.50
Hostetler & Associates	$321.95

IT IS SO ORDERED.

Dated this ____ day of May 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Thomas R. Lietz, Topeka, KS
H. Wayne Powers, Overland Park, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director